

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

TAYLOR F.,

Claimant,

v.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

OAH No. 2011061126

A Proceeding Under the
Lanterman Developmental Disabilities
Services Act

DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in Pomona on September 7, 2011. San Gabriel/Pomona Regional Center was represented by John Hope, Associate Director of Client Services. Claimant Taylor F. was present and represented by his father.

San Gabriel/Pomona Regional Center presented Exhibits 1 – 7 and the argument of the Associate Director of Client Services. Claimant Taylor F. presented Exhibits A – H and the testimony of his father, mother, and Arshalous Garlanian, Program Supervisor at Ability First. The parties' exhibits were admitted into evidence under Welfare and Institutions Code section 4712, subdivision (i).

Documentary and oral evidence having been received, the Administrative Law Judge submitted this matter for decision on September 7, 2011, and finds as follows:

ISSUE

The issue presented for decision is whether claimant Taylor F. should continue to receive day care services from Ability First.

FACTUAL FINDINGS

1. Claimant Taylor F. was born on August 18, 1992, and is 19 years old. He lives with his parents and two younger siblings in the family home in Sierra Madre. He has been diagnosed with Cerebral Palsy, developmental delays, and seizure disorder. Based on his developmental delays and/or disabilities, claimant is eligible for and receives services from the San Gabriel/Pomona Regional Center (Service Agency), including case management, respite, equestrian therapy, and 52 hours per month of day care services from Ability First.

2. Claimant is non-ambulatory, unable to sit without support, and has very limited fine motor and gross motor skills. He uses a wheelchair and incontinent supplies. He is largely non-verbal but can communicate with gestures, motions, and noises and by saying a few words although it is difficult to understand his speech. He needs constant supervision as well as assistance with all of his personal and self-help needs. For his educational needs, claimant attends Blair High School within the Pasadena Unified School District. He is placed in a class for severely handicapped students who are high functioning. He receives the assistance of a one-to-one aide and occupational and speech and language therapy at school. Claimant may attend the special education program at his high school until he is 22 years old. He also receives physical therapy that is paid for by his parents. Six months ago, in or about February 2011, claimant began receiving Supplemental Security Income (SSI) and 110.7 hours per month of In-Home Supportive Services (IHSS) from Los Angeles County.¹ Claimant's mother is his IHSS caregiver and also works part-time in the family's business. The father works 70 to 80 hours per week in the family's business and takes claimant to his equestrian therapy sessions.

3. Since 1999, claimant has been receiving equestrian therapy at Mach I, where he currently attends five 30-minute sessions per month. The primary purpose of the equestrian therapy has been to help strengthen claimant's trunk and the parents have observed slow but steady improvement in claimant's ability to control the trunk of his body. A secondary purpose of the therapy has been to give claimant the opportunity to socialize with typically developing peers. The Service Agency has funded the equestrian therapy as a non-medical therapy or social recreational activity.²

¹ IHSS helps disabled persons to pay for services to enable them to remain living in their own homes. Services that are authorized under the IHSS program include housekeeping, meal preparation, laundry, grocery shopping, personal care services, and accompaniment to medical appointments, protection supervision, and paramedical services.

² On December 13, 2010, in Case No. 2010070703, the Office of Administrative Hearings upheld the provision of equestrian therapy, a non-medical therapy, to claimant under Welfare and Institutions Code section 4648.5, subdivision

4. Claimant enjoys interacting with people and engaging in activities, but, due to his physical handicaps, he has few opportunities to meet others and to access the community. He has a difficult time establishing and maintaining friendships. Prior to September 2009, claimant began attending and receiving services at Ability First, which was initially funded by the Service Agency as social recreational programming. On September 9, 2009, claimant's Individual Program Plan (IPP) was amended and the Service Agency agreed to continue funding services at Ability First for claimant as day care because both parents worked in the afternoons and claimant needed a safe and structured environment where he could go to after school each day. Claimant's parents were informed that their son's day care service at Ability First may be subject to termination under the Service Agency's service policies when he turned 18 years old and that they may be required to use generic resources to pay for his daycare.

5. Claimant has been receiving services at Ability First for approximately four years. When he first attended Ability First, claimant was reserved and did not respond to staff. Now, claimant is comfortable with the staff there and enjoys participating in group activities with other peers. He communicates with others by gesturing and shaking his head, initiates interaction, smiles, and makes his choices known to others. Claimant has learned practical social skills that he uses at home and in the community.

6. Ability First is an authorized vendor of the Service Agency that provides social recreation programming and social skills training for developmentally disabled children and young adults at the Lawrence L. Frank Center in Pasadena. Consumers learn how to communicate and to be independent and improve their movement skills. Ability First has a swimming pool on-site where consumers, including claimant, have learned to improve their movements. The Service Agency has been providing funding for claimant to receive day care services at Ability First after school. At the end of each school day at 3:00 p.m., claimant is taken by a school bus to Ability First where he receives services for approximately two hours until 5:00 p.m., when his mother picks him up and drives him home.

7. Claimant has made some progress at Ability First. He has had the same two long-term goals. His first goal has been to increase his communication by use of words and gestures to three times per day and his second goal is to increase his participation in activities at the program to 10 minutes per activity once daily. He has improved his ability to communicate with prompts from staff. He enjoys group activities and jokes. He participates in activities for five minutes with physical support from staff and has shown improvement in his ability to interact with peers.

(c), as a primary or critical means of ameliorating the physical effects of his developmental disability.

8. On June 7, 2011, the Service Agency issued a Notice of Proposed Action, proposing to terminate funding for the 52 hours of day care services provided to claimant at Ability First. The Service Agency indicated that claimant's day care needs have not changed but he has generic resources, such as IHSS, to help pay for daycare. On June 15, 2011, claimant's mother filed a Fair Hearing Request to contest the termination of daycare services at Ability First for her son.

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Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds exist under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to grant, in part, claimant's request for continued services at Ability First, based on Findings 1 – 8 above.

Under the Lanterman Developmental Disabilities Services Act, the Legislature has decreed that persons with developmental disabilities have a right to treatment and rehabilitative services and supports in the least restrictive environment and provided in the natural community settings as well as the right to choose their own program planning and implementation. (Welf. & Inst. Code, § 4502.)³

Services and supports for persons with developmental disabilities means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability or toward the achievement and maintenance of independent, productive, normal lives. (§ 4512, subd. (b).) Services and supports may include training, education, recreation, behavior training, camping, daily living skills, community integration services, social skills training, personal care, and day care. (*Ibid.*)

The Legislature has further declared regional centers are to provide or secure family supports that, in part, respect and support the decision making authority of the family, are flexible and creative in meeting the unique and individual needs of the families as they evolve over time, and build on family strengths and natural supports. (§ 4685, subd. (b).) Services by regional centers must be provided in the most cost-effective and beneficial manner (§§ 4685, subd. (c)(3), and 4848, subd. (a)(11)) and must be individually tailored to the consumer (§ 4648, subd. (a)(2)).

³ Further section references are to the Welfare and Institutions Code unless indicated otherwise.

Further, section 4648, subdivision (a)(8), provides that the regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving funds to provide those services. Section 4659, subdivision (a)(1), directs regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services.

Section 4646.4, subdivision (a), requires regional centers, when purchasing services and supports, to ensure conformance with purchase of service policies and to utilize generic services and supports when appropriate. In addition, regional centers must take into account the consumer's need for extraordinary care, services, and supports and supervision.

More recently, effective on August 1, 2009, section 4648.5, was added to the Welfare and Institutions Code and provides, in pertinent part, that the authority of regional centers to purchase camping services, social recreation activities, educational services for children ages three to 17, and non-medical therapies, including specialized recreation, shall be suspended until the Individual Choice Budget is implemented and certified to result in sufficient state budget savings to offset the costs of providing such services. (§ 4648.5, subd. (a).) An exemption may be granted on an individual basis in extraordinary circumstances to permit the purchase of these services when a regional center determines that the services are a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs. (§ 4648.5, subd. (c).)

The Service Agency's Purchase of Service (POS) Policy for Day Care provides that the purpose of regional center support for day care is to cover the extra cost of specialized care due to the exceptional needs of a child with a developmental disability when day care is not available through usual resources in the community at prevailing community costs. Regional support for day care is not intended to cover all costs associated with providing care and supervision for a child with a developmental disability under the age of 18 years who is unable to care for himself.

Under its POS Policy, the Service Agency will fund the full cost of day care for a child from the age 13 until the age of 18. After the age of 18, other services and benefits, including SSI and IHSS, must be considered in determining the need for the purchase of day care. The Service Agency only provides funds for day care while parents are at work or vocational training; in two parent families, both parents must be employed or in vocational training to qualify for the service. The need and amount of day care services must be determined through the IPP process and may range from one to 20 hours per week. In determining this need, the Service Agency must take into account the family's responsibilities for providing similar services to a child without disabilities. Day care shall only be provided if the child requires a degree of

care beyond that normally associated with the care of an individual without a developmental disability. The IPP team shall determine what is most appropriate and cost-effective day care program available.

Under the Service Agency's POS for Social Skills Training, children and young adults may receive social skills training to develop appropriate social interaction skills so they may participate in their home and community. Social skills training may be provided in an individual or group setting and must address significant challenges in engagement and awareness of other people, social interaction, verbal and non-verbal social communication, or play skills. Social skills training is typically provided one to two times per week and is time-limited, usually not to exceed one to two years. The training must entail a detailed curriculum with meaningful and measurable outcomes, parent participation, and specific goals and objectives identified by the IPP. Social skills training is expected to prepare the child or young adult to transition to inclusive environments where he will be able to practice the skills learned and continue to build new skills.

The social skills policy provides that the Service Agency may purchase social skills training if the child or young adult exhibits significant needs in communication and social interaction that prevent him from forming relationships in the community or benefitting from social and recreational activities with typical peers, a qualified professional has conducted an assessment that provides evidence that the individual's social skills will improve with a structure, time-limited intervention, and the parents agree to assume a major role in implementing training strategies between sessions. Social skills training will be continue only if the individual makes reasonable progress toward IPP objectives, which will be reviewed every six months or at the end of the program session.

2. Discussion--In the present appeal, the Service Agency has proposed to terminate the funding for claimant's day care services at Ability First on the grounds that he should use generic resources to pay for daycare. The Service Agency concedes that claimant's day care needs have not changed but points out that claimant is no longer a child but is 19 years old now and has financial resources, including IHSS and SSI, that may be used to purchase day care for him. Claimant's parents, on the other hand, assert that IHSS cannot be used to pay for day care and that their son has benefited from and needs the services at Ability First.

Under a strict reading of the Service Agency's POS Policy and the nature of the service, claimant is no longer eligible for day care inasmuch as he is now 19 years old. Still, the POS Policy contemplates that the Service Agency may purchase day care for a consumer over the age of 18 after considering other services and benefits. [such as SSI and IHSS or, in other words, generic resources.] For the past year since claimant turned 18, the Service Agency has done just that and continued to fund day care for him in recognition presumably of his significant physical and self-help needs and the fact that both parents work and cannot care for him after school. But, in the

past year, claimant has also begun to receive SSI and IHSS funding and the Lanterman Act requires the Service Agency to take into account not only its own service policies but also the generic resources available to claimant when authorizing or funding services for him.

Frankly, however, while authorized or funded as day care, claimant's services at Ability First are a combination of both day care and social skills training. He goes to Ability First for a couple of hours after school and, while there, receives training and assistance to learn and practice social skills and participates in group activities with peers for communication and social interaction opportunities. In addition, claimant swims to improve his movement. According to his IPP, claimant has significant handicaps in mobility, communication, and social skills as well as limited chances to meet and to socialize with others. As a social skills training vendor with personnel who can assist claimant with his physical, communication, and social interaction needs, Ability First thus provides not only day care but also and social skills training that meets claimant's needs. Under section 4648.5, social recreation activities and non-medical therapies may still be provided in extraordinary circumstances as long as the service is a primary or critical means of ameliorating consumer's physical, cognitive, or psychosocial effects of his developmental disability.

The evidence in this appeal thus demonstrated that the social skills program at Ability First is a primary or critical means for ameliorating claimant's psychosocial effects of his developmental disability of Cerebral Palsy. It was not established that claimant receives any other social skills training or interaction opportunities either at school or in the community. His equestrian therapy is considered primarily a non-medical therapy for strengthening of his trunk.

As such, claimant's services at Ability First should be considered as much social skills training as day care. As a social skills training, the number of weekly sessions and length of services available for claimant at Ability First are limited by the Service Agency's POS Policy on social skills training. Moreover, the POS Policy requires that claimant's objectives and progress at Ability First service be evaluated and periodically reviewed by his IPP team. Taking into account claimant's needs and the generic resources now available for him, the balance of the evidence in this matter requires that claimant's services at Ability First be funded by the Service Agency and will be limited to 26 hours per month. If they so choose and because IHSS may be used for personal care and protective supervision, claimant's parents can use the generic resources of IHSS or SSI to pay for any additional monthly hours for claimant to attend the program at Ability First. Claimant's parents may want to consider seeking funding for after school care at Ability First from their son's school district.

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Wherefore, the Administrative Law Judge makes the following Order:

ORDER

The appeal of claimant Taylor F. from the determination of the San Gabriel/Pomona Regional Center to terminate day care services at Ability First is granted, in part. Claimant Taylor F. shall continue to receive funding from the San Gabriel/Pomona Regional Center for services from Ability First for 26 hours per month. San Gabriel/Pomona Regional Center and claimant's parents shall confer regarding claimant's objectives and goals at Ability First and shall evaluate the efficacy of this service after one year in accordance with the Purchase of Service Policy on Social Skills Training.

Dated: September 16, 2011

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision and either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.